

CITY OF HAMILTON

PLANNING AND DEVELOPMENT DEPARTMENT
Development and Real Estate Division

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|  Report to: Chairman and Members Planning and Economic Development Committee |  Submitted by: Lee Ann Coveyduck General Manager |
|  Date: April 1, 2005 |  Prepared by: Stan Holiday Ext. 4280 |

 **SUBJECT:** Status Report on Proposed Lowndes Holdings Corp. Quarry, 11th Concession Road East, Official Plan Amendment Application OPA-04-17 and Zoning Application ZAC-04-89 (Ward 15) (PD04244(a))

 **COMMENDATION:**

- (a) That Report PD04244(a) on the Lowndes Holdings Corp., proposed dolostone quarry, be received for information purposes.
- (b) That the Planning and Development Department report back to the Planning and Economic Development Committee with an information report on the results of the peer reviews to be conducted by the City's Peer Review Team following completion of these reviews.
- (c) That the City continue to commit to a comprehensive public consultation process, including all stakeholders, in its consideration of the Lowndes Holdings Corporation development applications to permit a dolostone quarry.
- (d) That the Clerk be directed to forward a copy of Report PD04244(a) to the proponent, surrounding municipalities, circulated agencies and departments, and that Planning and Development staff be directed to post Report PD04244(a) on the City of Hamilton's existing Lowndes Quarry website page in order to keep the public (including the residents group, FORCE) informed on the status of the City of Hamilton's review of the Lowndes Holdings Corp. development applications.

Lee Ann Coveyduck
General Manager
Planning and Development Department

**SUBJECT: Status Report on Proposed Lowndes Holdings Corp. Quarry, 11th Concession Road East, Official Plan Amendment Application OPA-04-17 and Zoning Application ZAC-04-89 (Ward 15) (PD04244(a))
- Page 2 of 11**

EXECUTIVE SUMMARY:

This report was prepared to provide Council and all other stakeholders with a status update on the City's review of the Lowndes Development Corporation applications, including the recent selection of a peer review team, and to report on recent changes in the policy context of the applications arising from the Greenbelt Act and regulations. On September 28, 2004, the City accepted applications submitted from Lowndes Holdings Corp. for an Official Plan Amendment (OPA-04-17) to amend the Flamborough Official Plan, and a Zoning By-law Amendment Application (ZAC-04-89). These applications propose a redesignation from "Rural" to "Extractive Industrial" in the Flamborough Official Plan, and a change in zoning from "A" Agricultural and "CM" Conservation Management to "EI" Extractive Industrial to permit a dolostone quarry for a 153.8 ha (380 acre) parcel of land fronting on the 11th Concession Road East and Milborough Line (which forms the boundary between the City of Hamilton and Region of Halton/Town of Milton), as shown on Appendix "A".

This report identifies the City's Peer Review Team for the review of the proposed quarry applications. The City's Review Team includes: (a) Steven Rowe, Environmental Planner as the City's Aggregate Planning Advisor, (b) Jagger Hims Limited for the peer review of geology/hydrogeology/operations, (c) Dougan & Associates for the peer review of natural heritage/ecosystem, aquatic and terrestrial biology, (d) Synectics Transportation Consultants & TSH Associates for the peer review of traffic safety and highway engineering and operations, and (e) Valcoustics Canada Ltd. for the peer review of noise and vibration from traffic and quarry operations, including blasting. The Peer Review consultant's work will commence once the City's funding agreement with the developer is in place.

This status report includes a commitment for on-going public consultation during the City's review of the quarry proposal, the anticipated policy framework of the evaluation required as a result of the Greenbelt Plan and subsequent legislation, the introduction of a Flowchart of the anticipated process for the review of applications under the Planning Act and Aggregate Resources Act, and the introduction of a technical review team of government agency stakeholders, named as Combined Aggregate Review Team (CART).

BACKGROUND:

Status Report, September, 2004

On June 30, 2004, Council directed that a report be prepared as indicated in the following resolution:

"That staff report back on the compatibility of the proposed aggregate extraction land use north of Carlisle, including, but not limited to, its impact on the surrounding residential and rural land uses, its impact on current infrastructure and local roads, and its conformity with existing and proposed municipal and provincial policies."

SUBJECT: Status Report on Proposed Lowndes Holdings Corp. Quarry, 11th Concession Road East, Official Plan Amendment Application OPA-04-17 and Zoning Application ZAC-04-89 (Ward 15) (PD04244(a)) - Page 3 of 11

In response to this request, Planning and Development staff prepared an information report on a potential new quarry in the former Town of Flamborough for the Planning and Economic Development Committee. Council endorsed the following (Minutes 04-16) on September 29, 2004:

- (a) That this information be received for information purposes.
- (b) That the Planning and Development Department report back to the Planning and Economic Development Committee with recommendations related to the anticipated development applications, following completion of public consultation and the review of the necessary supporting documentation by concerned departments, agencies and peer reviewers.
- (c) That Council request the proponent to pay all costs for retaining peer review consultants to provide expert advice to City staff in the review of applications and supporting documentation/studies, including the retention of an Aggregate Planning Advisor.
- (d) That the matter, Item 23 of the Planning and Economic Development Committee Minutes 04-012 (Item 9.1), be removed from the Outstanding Business List.

Details of the Proposal

On September 28, 2004, City of Hamilton Planning and Development staff accepted applications submitted from Lowndes Holdings Corp. for an Official Plan Amendment (OPA-04-17) to amend the Flamborough Official Plan, and a Zoning By-law Amendment Application (ZAC-04-89). These applications propose a redesignation from “Rural” to “Extractive Industrial” in the Flamborough Official Plan, and a change in zoning from “A” Agricultural and “CM” Conservation Management to “EI” Extractive Industrial to permit a dolostone quarry for a 153.8 ha (380 acre) parcel of land, as shown on Appendix “A”.

The applications propose a limestone quarry, processing plant, conveyors, scales and house, and a utility plant. The maximum rate of extraction is estimated at three million tonnes per year. The proponent also indicates in its applications that it owns an additional 62 hectares (154 acres) directly adjacent to the west of the subject lands for a potential future expansion/phase of the quarry, as shown on Appendix “B”.

Studies submitted in support of the application indicate that a Class Environmental Assessment study would be required to select a preferred haul route to the quarry, and to determine any road improvements that would be required to bring an access route up to the standard required for quarry traffic. The approach to traffic and environmental assessment studies is under discussion with the proponent.

SUBJECT: Status Report on Proposed Lowndes Holdings Corp. Quarry, 11th Concession Road East, Official Plan Amendment Application OPA-04-17 and Zoning Application ZAC-04-89 (Ward 15) (PD04244(a)) - Page 4 of 11

The proposed quarry would also require approval under the Aggregate Resources Act and other legislation including the Ontario Water Resources Act and Environmental Protection Act, however no applications have been submitted under any legislation other than the Planning Act at the present time.

City of Hamilton's Aggregate Planning Advisor

After receiving proposals from five potential qualified consultants to act as the City's Aggregate Planning Advisor, Steven Rowe, Environmental Planner, was selected by the Planning and Development Department in November 2004. Mr. Rowe has the necessary qualifications and experience to act as the City's Aggregate Planning Advisor. Since that time, the Aggregate Planning Advisor has been working with City staff to assist in review of the development applications, selecting the City's Peer Review Team, and meeting with City staff, the proponent and their consultants. He has also met with representatives from the residents group FORCE to discuss the City's approach to the review of these applications. The proponent has provided the necessary funding for the City's Aggregate Planning Advisor to this date.

City's Peer Review Consultant Team

The proposed peer review requires specialized expertise – not only in particular disciplines but also in their application to quarry applications and the specifics of the subject site and its surroundings. Some of these areas of expertise were not adequately represented on the City's roster of consultants. In order to assemble the necessary experts for the peer review, staff approached Council for direction. Council endorsed the following resolution on January 26, 2005 (Report 05-002):

- (1) That the Director of Development and Real Estate, in conjunction with Legal Counsel from the Legal Services Division, be authorized to retain, outside of the regular roster process, appropriate experts to provide the City with peer review services and advice respecting the Lowndes Holdings Corp. proposal (Dolostone Quarry) for the lands described as Part of Lot 1 and Lots 2 and 3, Concession 11, Township of East Flamborough, now City of Hamilton, municipally known as 475-515 11th Concession Road East, Flamborough.
- (2) That all the associated costs of the peer review will be paid for by Lowndes Holdings Corp.

At the time of writing this report the proponent had agreed to fully fund the City's Peer Reviews. The City's Peer Reviews will proceed once the funding agreement/arrangements with the proponent are in place.

After an extensive search of qualified potential peer reviewers and a review of submitted work plans, the Director of Development and Real Estate, in consultation with the Legal Services Division, has selected the City's Peer Review Team for the review of Lowndes

SUBJECT: Status Report on Proposed Lowndes Holdings Corp. Quarry, 11th Concession Road East, Official Plan Amendment Application OPA-04-17 and Zoning Application ZAC-04-89 (Ward 15) (PD04244(a)) - Page 5 of 11

Holdings Corp. quarry. In addition to the City's Aggregate Planning Advisor, Steven Rowe, Environmental Planner, the City's Peer Review Team includes:

- (1) Jagger Hims Limited for the peer review of geology/hydrogeology/operations.
- (2) Dougan & Associates for the peer review of natural heritage/ecosystem, aquatic and terrestrial biology.
- (3) Synectics Transportation Consultants & TSH Associates for the peer review of traffic safety and highway engineering and operations.
- (4) Valcoustics Canada Ltd. for the peer review of noise and vibration from traffic and quarry operations, including blasting.

In addition to the above Peer Review Team, the City will also be retaining consultants in the areas of air quality, including dust impacts, and in municipal economics for the City of Hamilton. These consultants will be retained later in the review process when more detailed information is available. The proponent will be requested to pay for these additional peer reviews and has indicated that they will do so. It is important to acknowledge that while the proponent is providing funding to the City to pay for the peer reviews, the City's Peer Review Team reports directly to the City's Director of Development and Real Estate and not to the proponent. The Peer Review Team is accountable to the City. This arrangement is required so that the City has access to resources and expertise that would otherwise not be available to ensure that the proponent provides sufficient information to evaluate the proposals, that there is a thorough technical review, and that the interests and issues that are within the City's mandate are properly addressed.

Preliminary Flowchart: Review and Decision Making Process for Lowndes Quarry Planning Act and Aggregate Resources Act (ARA) Applications

In order for all stakeholders (public, governments, commenting departments and agencies) to better understand what steps will occur in the review of this development proposal, a flowchart of the review and anticipated decision making process has been developed by the City Aggregate Planning Advisor in consultation with staff, as shown on Appendix "E".

The flowchart helps to identify key steps and milestones throughout this complex process. Key components include: peer reviews, agency involvement, public input, and the use of a technical committee (CART-Combined Aggregate Review Team). The flowchart makes provision for stakeholders to be engaged at key times in the process (i.e. having public consultation when there is something to review or be able to provide input and receive feedback). The proposed process is intended to enable effective utilization of both public and government resources. The word "preliminary" has been used to describe the flowchart because changes will likely be required as the review process evolves. While it is staff's intention to expedite the process to the extent

**SUBJECT: Status Report on Proposed Lowndes Holdings Corp. Quarry, 11th Concession Road East, Official Plan Amendment Application OPA-04-17 and Zoning Application ZAC-04-89 (Ward 15) (PD04244(a))
- Page 6 of 11**

possible, no timelines are shown on the chart. The City will undertake whatever steps are necessary to complete a comprehensive review of the proposal, however some aspects of timing are outside the City's control. Staff is fully aware that all stakeholders in this process are seeking early resolution, to the extent possible.

Combined Area Review Team (CART)

In order to coordinate valuable technical input from agencies and government stakeholders on both the Planning Act and Aggregate Resources Act applications, a Review Team will be established named Combined Aggregate Review Team (CART). The following stakeholders have already expressed interest in the applications and will be requested to participate in this working group: Conservation Halton, Region of Halton, Town of Milton, City of Burlington, the Niagara Escarpment Commission, Ministry of Municipal Affairs and Housing, Ministry of Natural Resources, Ministry of the Environment, Ministry of Transportation, Hamilton-Wentworth District School Board, Hamilton-Wentworth Catholic District School Board and City Departments. The level of participation will be left up to each particular stakeholder. While members of a stakeholder group may participate as part of CART, and while consensus will be sought among the CART agencies, this does not preclude any government stakeholder from submitting its own independent comments on the applications. CART will provide each participating stakeholder the opportunity to have a "hands on approach" to the review process, to share perspectives and expertise and to develop a unified approach in dealing with the proponent and, where possible, in arriving at positions on key issues. While some discussions have already taken place, City staff will be formally establishing CART over the next month.

Existing Land Use and Features On Site

The subject lands, as shown on Appendix "A", are comprised of three former property holdings on the north side of the 11th Concession Road East. Current land uses include residential homes, barns and fields that have been used for agricultural purposes. The site also includes watercourses, provincially significant wetlands, and heavily wooded/vegetated areas. An aerial photograph of the area is shown on Appendix "D".

Official Plans

The Hamilton-Wentworth Official Plan (HWOP) designates the subject lands as "Rural Area". The Flamborough Official Plan designates the subject lands as "Rural".

Zoning

The subject lands are zoned as both "A" Agricultural Zone and "CM" Conservation Management Zone.

SUBJECT: Status Report on Proposed Lowndes Holdings Corp. Quarry, 11th Concession Road East, Official Plan Amendment Application OPA-04-17 and Zoning Application ZAC-04-89 (Ward 15) (PD04244(a)) - Page 7 of 11

Process and Policy Framework

In addition to the Hamilton-Wentworth Official Plan, the Flamborough Official Plan and the Flamborough Zoning By-law, the following is a summary of the legislation and planning documents staff will consider in the review of the development applications submitted to the City.

The Greenbelt Act, 2005 (Greenbelt Plan)

On February 24, 2005, the Greenbelt Act was passed by the Provincial legislature. The Act permits the Provincial government to establish a Greenbelt Plan. Key elements of the legislation are the protection of greenspace and containment of urban sprawl in the Greater Golden Horseshoe. The Greenbelt Plan was approved on February 28, 2005, by Order in Council. The subject site falls within the defined Greenbelt. The Greenbelt Plan takes effect retroactively from December 16, 2004, but, as described below, it also applies to the Lowndes quarry applications.

The detailed implications of the Greenbelt Plan for the quarry applications will be reviewed and reported to Council as part of the peer review. The following is intended as a preliminary description of its scope and application.

The subject lands of the proposed quarry are designated as “Protected Countryside” on Schedule “1” within the Greenbelt Plan 2005, as shown on Appendix “C”. The “rural areas” (i.e. outside settlements and prime agricultural areas – the subject lands are within the rural area) of the Protected Countryside are intended to accommodate a range of “commercial, industrial and institutional uses serving the rural resource and agricultural sectors.”

Schedule 4 of the Greenbelt Plan appears to show the subject lands as lying entirely within the “Natural Heritage System” within the “Protected Countryside”, however, this remains to be confirmed through review of more detailed mapping, when it becomes available. The Plan states that the Natural Heritage System “provides a continuous and permanent land base necessary to both support human and ecological health in the Greenbelt and beyond”.

The Plan includes detailed policies for the protection of the Natural Heritage System in Section 3.2, and, at the same time, includes policies specific to non-renewable resources and mineral aggregate operations in Section 4.3.2.

Section 4.3.2, Non-Renewable Resource Policies

This Section outlines policies for non-renewable resources (specifically mineral aggregate resources and operations) which are permitted within the Protected Countryside, subject to all other applicable legislation, regulations and municipal official plans and Zoning By-laws. At the same time, the Plan does not permit Official Plans and Zoning By-laws to be more restrictive than the Greenbelt Plan in relation to the

SUBJECT: Status Report on Proposed Lowndes Holdings Corp. Quarry, 11th Concession Road East, Official Plan Amendment Application OPA-04-17 and Zoning Application ZAC-04-89 (Ward 15) (PD04244(a)) - Page 8 of 11

aggregate policies of Section 4.3.2. In some respects, the policies defer to the Provincial Policy Statement.

The Plan states that “aggregates, in particular, provide significant building materials for our communities and infrastructure, and the availability of aggregates close to market is important for both economic and environmental reasons”. The following summary draws attention to those policies most relevant to the subject applications.

Proposals for new mineral aggregate operations, wayside pits and expanded mineral aggregate operations in the Natural Heritage System are subject to detailed policies. In particular, no new mineral aggregate operation (quarry) is permitted in significant wetlands, significant habitat of endangered or threatened species, or significant woodlands.

Significant wetlands have been identified on site, and the Greenbelt Plan now provides a higher degree of protection for significant woodlands than the Provincial Policy Statement. There is potential for woodlands on site to be identified as significant, depending on criteria to be established by the Province.

An application for a new mineral aggregate operation may be permitted in other key natural heritage features and key hydrologic features, and any vegetation protection zone associated with such other feature, where the application demonstrates how the water resource system will be protected or enhanced and how the key features will be maintained, restored or improved. Requirements for the rehabilitation of aquatic areas remaining after extraction must also be met. Applications are also required to demonstrate how connectivity will be maintained between key natural heritage and hydrologic features, and how lost habitat would be replaced. This Section also provides for tighter control over a number of aspects of quarry development and rehabilitation by the Ministry of Natural Resources than would normally be the case outside the Greenbelt. There are also policies regarding rehabilitation requirements which provide for additional natural heritage protection.

Ontario Regulation 61/05 (made under the Greenbelt Act, 2005)

On February 28, 2005, the Province of Ontario filed Regulation 61/05 which “prescribes” certain applications, matters, proceedings and policies under the Greenbelt Act. Prescribed applications are subject to the Greenbelt Plan, even though they might otherwise have been exempt because they were commenced before the Plan was approved or came into effect. The Regulation requires that any Official Plan Amendment applications to permit mineral aggregate uses where the application was commenced on or after December 16, 2003, but before December 16, 2004, and where no decision was made prior to February 28, 2005, are subject to the Greenbelt Plan. The Lowndes proposed quarry Official Plan Amendment application meets this criterion and is subject to the Greenbelt Plan since it was commenced in September 2004 and no decision on it has been made.

**SUBJECT: Status Report on Proposed Lowndes Holdings Corp. Quarry, 11th Concession Road East, Official Plan Amendment Application OPA-04-17 and Zoning Application ZAC-04-89 (Ward 15) (PD04244(a))
- Page 9 of 11**

Ontario Regulation 63/05 (made under the Planning Act)

On February 28, 2005, the Province of Ontario filed Regulation 63/05 making transitional provisions for applications received prior to the adoption of the new Provincial Policy Statement (PPS). At this time, it is our understanding that the transitional provisions would imply that Official Plan Amendment or Zoning By-law Amendment applications commenced on or prior to February 28, 2005, will be subject to “have regard” rather than “be consistent with” policies of the Provincial Policy Statement. The Lowndes proposed Official Plan Amendment and Zoning By-law Amendment applications meet this transitional criterion, as the applications were commenced in September 2004.

Application of the Greenbelt Act, 2005 (Greenbelt Plan) and Provincial Policy Statement (1997)

The review of this quarry application by the City of Hamilton will likely be unique in the entire Province. This is because it is likely to be the only (or one of a limited number) of Official Plan Amendment applications for mineral aggregate land uses in the Province subject to the Greenbelt Plan because of Ontario Regulation 61/05, while at the same time, subject to the previous Provincial Policy Statement, and the “have regard” rather than the “be consistent with” requirement.

Aggregate Resources Act

The proponent is required to submit an application for a licence for an open-pit quarry under the provincial Aggregate Resources Act, which is supported by the “Aggregate Resources of Ontario Provincial Standards”. The Act and the Provincial Standards combined are very specific on what matters are to be addressed by the proponent, the types of studies that are likely needed to be submitted with the license application, and the process for the consideration of applications under this legislation. The City has the role as a commenting agency on the license application, while the Province is the approval authority. The process for the City’s involvement in this process is summarized in the preliminary flow chart provided as Appendix “E”. The license application includes a site plan which, in this case, would be for a Category 2, Class A licence, i.e. for a quarry extending below the water table that will extract more than 20,000 tonnes of aggregate annually. The site plan is required to provide details including existing features, operations, phasing, progressive rehabilitation, final rehabilitation and cross-sections of the operation.

It should be noted that the City has no approval authority for a site plan for a pit and quarry under Section 41 of The Planning Act, and so it would not be able to impose site plan conditions or enter into development agreements. Any required provisions, such as access improvements, would have to be dealt with by other means. The proponent has advised that they will not proceed with a license application with the Province until they are in a position to respond to issues which arise through the review of the Official Plan and Zoning Amendment applications.

**SUBJECT: Status Report on Proposed Lowndes Holdings Corp. Quarry, 11th Concession Road East, Official Plan Amendment Application OPA-04-17 and Zoning Application ZAC-04-89 (Ward 15) (PD04244(a))
- Page 10 of 11**

Public Consultation Process

A preliminary circulation notice dated October 4, 2004, of the Official Plan and Zoning Amendment applications was mailed out by the City Clerk's Division to adjacent landowners and municipalities.

Planning staff have posted the proponent's submitted application and supporting reports in an electronic format on the City of Hamilton's website under newsroom/current news/Lowndes Quarry and provided a paper copy of the proponent's complete submission at the Flamborough Service Centre at 163 Dundas Street East (Hwy. #5) and this information is also available at Hamilton City Hall, 7th Floor, for public review.

Planning staff, City Departments and politicians have received many letters, emails and telephone calls from the public concerning this proposed quarry. All of these concerns will be considered during the process of the City's review of the development applications. A compendium of the responses and issues identified will be assembled as part of a future report. The issues and concerns of the public will be provided to the City's Peer Review Team for their information and input into their peer review. The areas of general concern identified are the same as previously identified to staff, and include: impact on water supply and quality, significant environmental impacts, transportation impacts and road safety, quality of life, noise, vibration, blasting, dust and air pollution, economic impacts, and greenbelt legislation impacts on the proposal.

The flowchart attached to this report, shown as Appendix "E", indicates the anticipated review and decision process for the Lowndes Quarry Planning Act and ARA Applications and identifies when both public input and technical input from stakeholders will be sought.

ANALYSIS OF ALTERNATIVES:

It is premature to consider any alternatives at this time pending review of the development applications and supporting documentation and input from concerned departments, agencies and the peer reviews to be undertaken by the City.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial

There are no financial implications to the City resulting from this recommendation at this time, although extensive staff costs, beyond most other types of applications, is required. The proponent has been requested to provide all funding for peer reviewers retained by the City to review specific supporting consultant studies and City staff is finalizing these arrangements.

SUBJECT: Status Report on Proposed Lowndes Holdings Corp. Quarry, 11th Concession Road East, Official Plan Amendment Application OPA-04-17 and Zoning Application ZAC-04-89 (Ward 15) (PD04244(a)) - Page 11 of 11

Staffing

Significant staff resources are anticipated to continue to be required given the public consultation process required, and anticipated involvement of staff from the various departments to review or coordinate anticipated peer reviews of supporting studies to be submitted by the proponent.

Legal

There are no legal implications identified at this time, as related to the report's recommendations.

POLICIES AFFECTING PROPOSAL:

The evaluation of the policy details will be part of a future report to Planning and Economic Development Committee.

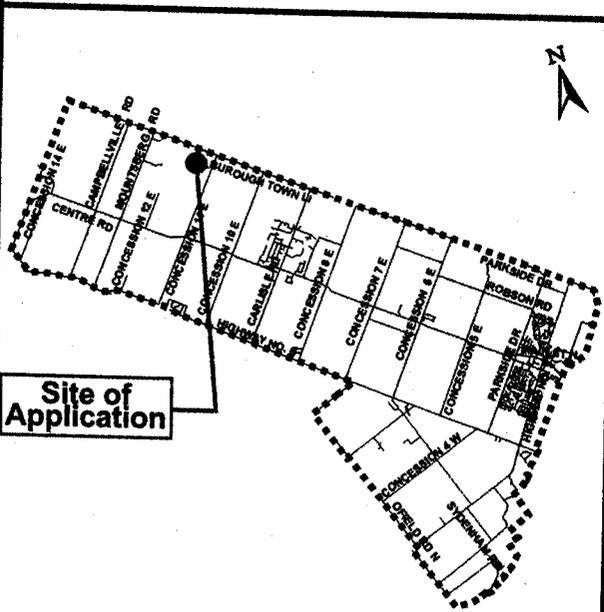
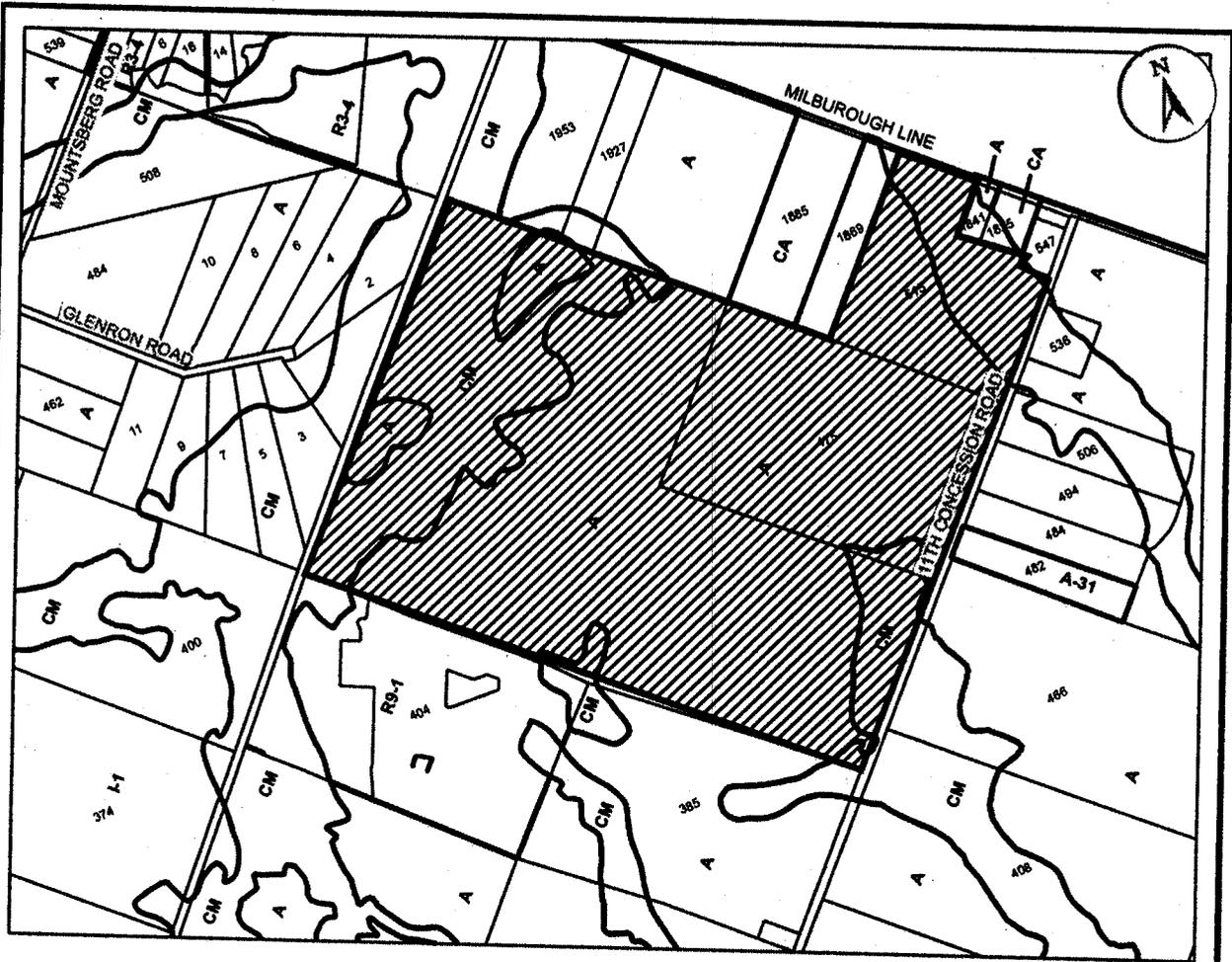
CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:

The Planning and Development Department has circulated the development proposal to all concerned departments and agencies. In particular, all the proponents supporting studies have been sent to the School Boards, Region of Halton, Town of Milton, City of Burlington, Conservation Halton, Ministry of Municipal Affairs and Housing for circulation to Ministry of Transportation, Ministry of Natural Resources, and Ministry of Environment. The Niagara Escarpment Commission has also requested to participate in the review of the applications and has been provided the documentation submitted. Preliminary comments received from these agencies have identified significant concerns. The type of issues range from concerns regarding student safety and impact on water quality in the schools from the Hamilton-Wentworth District School Board and Hamilton-Wentworth Catholic District School Board, to deficiencies in the environmental work identified by Conservation Halton. The surrounding municipalities of the Region of Halton, Town of Milton, and the City of Burlington have major concerns with traffic, environmental impacts, water quality and quantity etc. All concerns will be further evaluated as part of the City's peer review and the Combined Aggregate Review Team process.

KEY STRATEGIC COMMITMENT:

The development applications submitted will be reviewed in a future report with regard to their compliance with the goals and strategies of Vision 2020.

:SH
Attachs. (5)



Ward 15
Keymap

N.T.S



Hamilton

Planning and Development Department

Location Map

File Name/Number:
OPA-04-17/ZAC-04-89

Date:
September 30, 2004

Appendix "A"

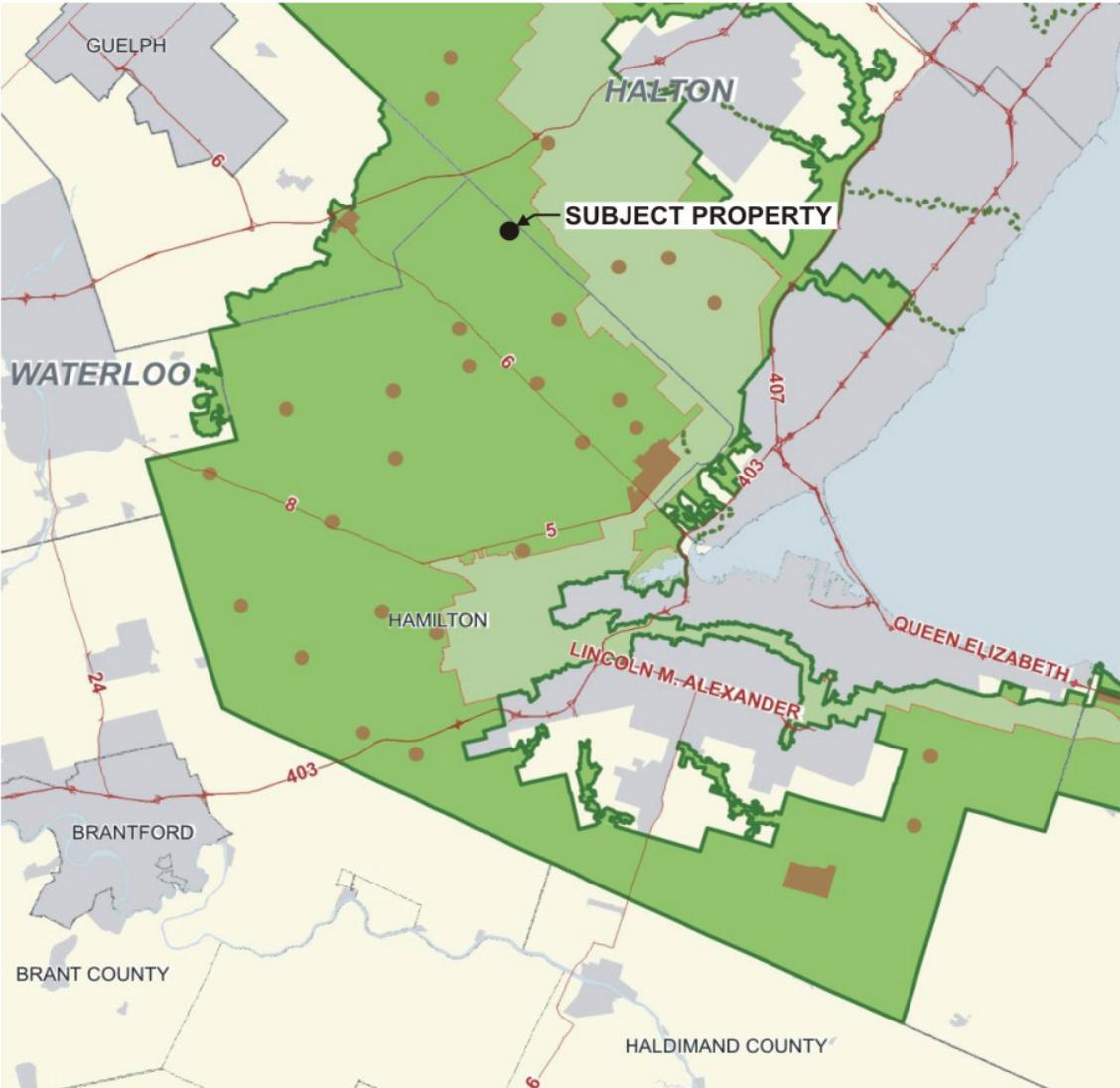
Scale:
N.T.S

Technician:
S.H/L.M



Subject Property

475-515 11TH Concession Road East
(Flamborough)



LEGEND

- Greenbelt Area*
- Protected Countryside
- Towns and Villages
- Hamlets
- Niagara Escarpment Plan Area
- Oak Ridges Moraine Area
- Settlement Areas Outside the Greenbelt
- River Valley Connections (outside the Greenbelt)
- Upper-tier Municipal Boundaries
- Single-tier Municipal Boundaries
- Major Roads
- Water

Projection: UTM zone17 NAD83
 © Queen's Printer for Ontario, February 28, 2005
 Produced and data sources by the Ministry of Agriculture and Food, Ministry of Municipal Affairs and Housing and Ministry of Natural Resources
 Additional Data Sources: DMTI Spatial Inc.

Notes:
 Settlement boundaries reflect current municipal Official Plans. For precise boundaries and locations of Settlement Areas (Towns/Villages and Hamlets) the appropriate municipalities should be consulted.
 The information displayed on this map has been compiled from various sources. While every effort has been made to accurately depict the information, this map should not be relied on as being a precise indicator of locations of features or roads nor as a guide to navigation.
 * Ontario Regulation XX/XX

| | | |
|---|---|---|
| Scale: N.T.S. | Greenbelt Plan Area: Schedule 1 |  Hamilton Planning & Development Department |
| Date: March, 2005 | Appendix "C" | |
|  | ● SUBJECT PROPERTY 475-515 11TH Concession Road East (Flamborough) | |

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Preliminary Flowchart: Review and Decision Making Process for Lowndes Quarry Planning Act and ARA Applications: March 2005

